

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR08-946

RICHARD REED,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

**Opinion Delivered** APRIL 8, 2009

APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT,  
[NO. CR2007-650A-2]

HONORABLE GARY ARNOLD,  
JUDGE

AFFIRMED

**KAREN R. BAKER, Judge**

Appellant Richard Reed was arrested and charged with manufacturing methamphetamine. In accordance with Rule 24.3 of the Arkansas Rules of Criminal Procedure, appellant entered a conditional plea of guilty to the charge. The trial court determined that a factual basis existed for the plea and that the plea was voluntary. As a result, appellant was sentenced to twenty years' imprisonment in the Arkansas Department of Correction to run concurrent with a sentence that appellant was currently serving. On appeal, he contends that the trial court erred in denying his motion to suppress. We affirm.

At the hearing on appellant's motion to suppress, the State presented one witness, narcotics officer Detective Lance Smith. Detective Smith testified that around 10 p.m. on July 20, 2007, he received a tip about a possible methamphetamine lab at a trailer home near Boone Road across from the Corner Market in Saline County. Detective Smith arrived at the location in an unmarked car. He parked the car, exited the vehicle, and discreetly approached the trailer home. As he got closer,

he could smell what he described as a “defined chemical odor.” He explained that the odor was consistent with the production of methamphetamine, specifically the “gassing off process” involving the HCL generator. He had become accustomed to the distinct odor during his training as a narcotics officer, which consisted in part of cooking methamphetamine in order to become accustomed to the odor. When he identified the odor, he immediately called Sergeant Wood to inform him that a methamphetamine lab was in process and to request that back-up officers be sent to the location.

While he waited for the back-up officers to arrive, Detective Smith looked through a window located near the front door of the trailer home. The window was slightly open and the blinds were somewhat raised “at an angle.” Through the window, he could see a light on, and he could see a white male—later determined to be appellant—sitting at a table. He could also hear a female voice as well as a third person walking toward the other end of the trailer home. While he was observing the male sitting at the table, Detective Smith saw him raise a glass object to his mouth, put a lighter underneath one end of it, and appear to inhale and exhale light smoke. Detective Smith also noticed a counter top behind the table. On the counter top was a clear plastic bottle with a black lid sitting on top of it. Smith described the bottle as having “a tube running off of it and there was gas coming off of it.” The bottle had “crystal stuff” inside of it, which Smith knew to be consistent with an HCL generator. Detective Smith also watched as a second white male entered the room holding a bottle with “black tape around [the] side” of the bottle. The male appeared to be wrapping tape around the top of the bottle and placing it in a plastic bag.

When the back-up officers arrived at the scene, Detective Smith motioned for them to come over to where he was standing and observing through the window. As he motioned for the officers, the occupants of the home noticed him standing outside. Detective Smith testified that one of the

occupants yelled to the others, and they all began to scatter. Detective Smith testified that he was concerned that when the occupants saw him and began to run that they would attempt to destroy evidence. He and the other officers hurried to the front door. Detective Smith announced “Benton Police Department,” opened the door, and went inside. The occupants were escorted outside and handcuffed. Detective Smith testified that he had the individuals leave the trailer home because of the seven to ten different types of harmful and deadly gases that methamphetamine labs produce during almost every stage of production. He also testified that his goal was to get everyone out of the trailer home and to a safe area. Once everyone was outside, Smith made a sweep of the house, opening windows to let the gases clear out of the home. Smith and the other officers also removed two bottles, one of which had gases emitting from it. Once the bottles were outside, they were photographed and sealed off so that gases would no longer escape. Smith also removed an item from a heating element, but did not unplug the heating element for fear that it would create a spark.

After the occupants were outside and the home was somewhat ventilated, Smith needed to wait approximately thirty minutes before re-entering the home to allow the harmful gases to escape. During this time, Smith spoke with appellant. Appellant was sitting outside the trailer home. Smith informed appellant that he wanted consent to search the home and informed appellant of his rights. Specifically, appellant was informed of his right to refuse or at any point stop the search of the home. Appellant was given the consent form. Appellant appeared to understand the form, the form was read to him, and he signed the form. Detective Smith testified that appellant was “quite cooperative.” Appellant was present during the entire search, and at one point, assisted the officers by showing them two white plates with methamphetamine residue on them. At the conclusion of the search, appellant was taken to the Saline County jail.

After a hearing on appellant's motion to suppress, the trial court found that "based upon probable cause, the exigent circumstances, and the defendant's consent, the arrest of the defendant and the search of his residence were lawful." Appellant's motion to suppress evidence was denied. This appeal followed.

An appellate court conducts a de novo review of a denial of a motion to suppress evidence based on a totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003); *Weatherford v. State*, 93 Ark. App. 30, 216 S.W.3d 150 (2005).

On appeal, appellant contends that the trial court erred in denying his motion to suppress evidence because the officers lacked both exigent circumstances and probable cause when they entered appellant's home without a warrant. Warrantless searches in private homes are presumptively unreasonable, and the burden is on the State to prove that the warrantless activity was reasonable. *Steinmetz v. State*, 366 Ark. 222, 234 S.W.3d 302 (2006) (citing *Baird v. State*, 357 Ark. 508, 182 S.W.3d 136 (2004)). However, an officer may enter a home without a warrant if the State establishes an exception to the warrant requirement. *Baird, supra*. An exception to the warrant requirement occurs where, at the time of entry, there exists probable cause and exigent circumstances. *Steinmetz, supra* (citing *Mann v. State*, 357 Ark. 159, 161 S.W.3d 826 (2004)). Probable cause is determined by applying a totality-of-the-circumstances test and exists when the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed. *See Baird, supra*. Exigent circumstances are those

requiring immediate aid or action, and, while there is no definite list of what constitutes exigent circumstances, several established examples include the risk of removal or destruction of evidence, danger to the lives of police officers or others, and the hot pursuit of a suspect. *See Mann, supra*. Under our case law, this court may only examine those exigent circumstances that existed at the time of the entry. *See id.* In evaluating whether exigent circumstances exist, we are to consider the extent to which the police had an opportunity to obtain a warrant, and whether it was foreseeable that the chosen police tactics might precipitate the kind of circumstances contemplated by Rule 14.3. *Robbins v. State*, 94 Ark. App. 393, 231 S.W.3d 79 (2006) (citing *Mann, supra*).

Arkansas Rule of Criminal Procedure 14.3 (2008) states that an officer who has reasonable cause to believe that premises contain individuals in imminent danger of death or serious bodily harm or things imminently *likely to burn, explode, or otherwise cause death, serious bodily harm,* or substantial destruction of property or things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed; may, without a search warrant, enter and search such premises and vehicles, and the persons therein, to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction. (Emphasis added.)

The testimony at the hearing showed that Detective Smith, a trained narcotics officer, recognized immediately upon approaching appellant's trailer home a "defined chemical odor," indicative of the production of methamphetamine. He also observed what he believed to be methamphetamine paraphernalia through a window, including what he knew to be consistent with an HCL generator. He watched two individuals inside the home, who were actively engaged in the methamphetamine cook and heard the voice of a third individual. Based upon his training and experience, he concluded that the occupants of the home were at risk of serious bodily harm from

the dangerous gases produced in the methamphetamine lab. These facts provided the necessary exigent circumstances to justify entering the house without a warrant under Rule 14.3. *See Loy v. State*, 88 Ark. App. 91, 195 S.W.3d 370 (2004). In *Loy*, this court explained:

We hold that the initial entry of Officers Spenser and Willis was justified under subsection (a) of Rule 14.3 of the Arkansas Rules of Criminal Procedure. Based upon what the officers saw and smelled when appellant opened the door, they believed that methamphetamine was being manufactured, which, based upon their knowledge of meth labs, would pose a threat of immediate serious bodily harm to anyone in the residence. The officers also had reason to believe that there were other persons in the residence based upon the footsteps that they heard when they first arrived and the fact that there was a female sitting at the table who said that she thought there was a female in the back of the house. We hold that this was proper in light of the circumstances.

*Loy*, 88 Ark. App. at 104, 195 S.W.3d at 376.

Similarly, in the instant case Detective Smith was trained and experienced in dealing with methamphetamine labs, and he concluded that a methamphetamine lab was on the premises based upon his experience and training concerning the “distinct” odor. He recognized that the methamphetamine lab produced harmful gases that posed a threat of immediate serious bodily harm to the three occupants of the home. We find, as in *Loy*, that under these specific circumstances the trial court did not err in finding that exigent circumstances existed to justify the warrantless entry into appellant’s home.

In addition, appellant contends that his consent to search his home was not “altogether voluntary.” An officer may conduct searches and make seizures without a search warrant or other color of authority if consent is given to the search. Ark. R. Crim. P. 11.1(a); *Welch v. State*, 364 Ark. 324, 219 S.W.3d 156 (2005). A person may consent to a warrantless search; however, the State has the burden of proving that the consent was freely and voluntarily given and that there was no actual

or implied duress or coercion. Ark. R. Crim. P. 11.1(b); *Welch, supra*. The Supreme Court has held that a valid consent to search must be voluntary, and that “[v]oluntariness is a question of fact to be determined from all the circumstances.” *Welch*, 364 Ark. at 328–29, 219 S.W.3d at 158 (quoting *Ohio v. Robinette*, 519 U.S. 33, 40 (1996)).

Appellant cites to *Scott v. State*, 347 Ark. 767, 780, 67 S.W.3d 567, 576 (2002), in support of the argument that if the voluntariness of consent must be judged in light of the totality of the circumstances, appellant’s consent did not appear altogether voluntary. Yet, appellant was informed of his right to withhold his consent and stop the search of his home. Appellant appeared to understand his rights and signed the consent to search form. He was cooperative and even assisted the officers in conducting the search. We, therefore, hold that in light of all the circumstances in this case, the trial court did not err in finding appellant’s consent to the search of his home was unequivocal and voluntarily given.

Affirmed.

ROBBINS and KINARD, JJ., agree.